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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X Case No 8-12-76440ast  
In Re Judge Alan S Trust

American Land Acquisition Corporation

Feb 19 2013

Debtor

-----X

REPLY AFFIDAVIT

STATE OF NEW YORK )

) SS.:

COUNTY OF SUFFOLK)

INTRODUCTION

Dale Robert Javino, being duly sworn depose and state as follows:

1. I am the party responsible for American Land Acquisition Corporation the debtor, also for both mortgages and both foreclosure actions notwithstanding all the real estate taxes due and any other item or issue surrounding American Land Acquisition Corporation its properties or assets liabilities etc.etc...

2. I ask with leave from your Honorable Court to accept my reply affidavit and all my documentation and proof that I am submitting to you in lieu of all the bad press that I am receiving from all the parties and or non parties to this matter as I will explain and disclose to this Court fully with proof that it is mostly inaccurate and misleading as follows:

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U.S. BANKRUPTCY COURT  
EASTERN DISTRICT OF  
NEW YORK  
CLERK

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**BACKGROUND**

3. I will start from the very beginning and be brief as possible and get right to the point. I purchased the property from Joseph Gazza Sr. on November 30, 2000 ( now deceased Feb 28 2011) for the sum of 175,000 dollars. He had taken back a purchase money mortgage for 150,000 dollars, ten (10) years @ 8 percent interest cost about 1800 per month. On or about December 2000 I paid Mr Gazza 24,000 dollars, intermittently paid him monthly in lieu of the fact I own a construction company bidding public jobs and get paid by the job not weekly such as completing Down State Hospital ICU, New York Eye & Ear and Queensboro College chiller and cooling tower replacement to name a few projects completed in good standing. So in essence sometimes I get paid within one year. On or about 2005 I paid Joseph Gazza 30,000 dollars cash and 60,000 dollar check not withstanding other miscellaneous payments. On or about 2007 Joseph Gazza commenced foreclosure proceedings by retaining Arthur Georginni and his daughter Renee. They commenced this without giving me any credit for the payments I made and without serving me the summons and complaint. Georginni managed to get a default judgment against me and when I found out a year later I filed an order to show cause (See Exhibit A 1 OSC) and went in front of Honorable Costello arguing CPLR 308 improper service and the fact I wasn't in default because I paid Mr Gazza. The Gazza's agreed after the fact that I did indeed pay the 30,000 cash but would not credit me for the check. Please note the cash receipt was on toilet paper so to speak. On Feb 4, 2010 while in the hallway 3<sup>rd</sup> floor Suffolk Supreme outside Hon Costello's Courtroom being present Joseph Gazza a seasoned realtor Joe Gazza Jr an attorney Joe Gazza's son Zack Gazza an attorney ,

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Joseph Gazza's attorney Renee Georginni Esq. and the judges law secretary who all told me I will lose the property that it was being sold shortly if I didn't sign a stipulation dated that day February 4, 2010 and told me I could pay them 175,000 dollars and gave me until the end of February. Please note I was totally alone facing off against all of the above individuals. Please review Marc Pergament's Exhibit ( B ) Three weeks to pay 175 000 dollars I said no one in their right mind would sign this and considering the strenuous circumstances duress and very high pressure I signed and regret it to this day. Son etime thereafter I told Honorable Costello I should have stayed in bed that day. That stipulation has haunted me ever since even today. I owe the Gazza's about 36,000 dollars principal which comes out to be about 240 dollars per month interest since August 2005 comes out to be about 22,000 dollars not including legal fee's. I personally owe the Gazza's 58,000 dollars plus legal fee's. Any real estate taxes they paid I paid them back and if we have to litigate that matter here I will then show proof at that time. In essence I personally not American Land owe the Gazza's about 68,000 dollars total as of this month January 2013. Please note incorporated in these proceedings Joe Gazza Jr. managed to get an exhibit letter into David Fallon's client Wayne Miller's affidavit in opposition which I will explain later on.

4. While all this is going on approximately 2004 I borrowed 150,000 from a second mortgage person hard money, Joseph Content using the Ronkonkoma property as collateral and I paid Gazza the 90,000 dollars and used the rest for investment and business purposes. On Sept 15, 2008 I paid off the second mortgage holder Joseph Content 275,000 dollars from the sale of another parcel. Around that time I transferred the

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property in question over to my new company American Land Acquisition Corporation (further mentioned as ALAC) for a promise of 800,000 dollars. ALAC had no money no assets and the plan was to get money's to invest in tax foreclosures with assets owned by ALAC which is the whole concept and why its birth came about. On or about Sept 2009 American Land debtor herein borrowed 40,000 from Wayne Miller and am truly grateful and very sorry he has to be dragged through this legal wrangling and though I am responsible and will pay him plus interest and attorney fee's his attorney didn't work with me to pay off his client rather worked against me as I will explain further. Please note banks were not doing well during this time and banks will not entertain loans from new corporations.

5. On or about 2011 I was informed through the Unified Court system website that Wayne Miller was intervening into the Gazza Foreclosure. When I researched the matter further I found out that Wayne Miller through other Counsel that he had commenced foreclosure of his own and at that time David Fallon the current attorney for Miller was moving the court for an order to intervene. He did this without informing American Land Acquisition Corp or myself at my current offices or property and continues to do this right up until today with everything except his affidavit in opposition which I did receive at the 1000 Tenth Street offices last week.

6. Please note: I have diligently been wrangling with lenders and property sales of my own to pay off Mr Miller and the first mortgage holder and the bottom line On August 10, 2012 after months of negotiations I have contracted Eugene Smith & Gene's Four Season Landscape and Nursery to purchase half the property for Five Hundred (500,000)

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Dollars (see exhibit A contract and other agreements). By virtue of this document I give your Honorable Court authority to contact either attorney or party involved in that contract and here's what happened. My then attorney Christian Kolleran Esq. whom I paid over 2500 dollars to represent me in this ordeal contacted both mortgage holders and received payoff's with a due date of on or before August 31, 2012. Gazza with Georgini Esq. for the first wants 150,000 dollars and Miller with Fallon Esq. for the second wants 53,000 dollars (Please see payoff's as exhibit B). The matter was set to close on or before August 31, 2012 there was a simple title issue with the certificate of occupancies for the two structures on the property. Eugene Smith president of Gene's Four Season Landscape and Nursery ( please note Mr Smith is a veteran and had partnered with me in a NOT FOR PROFIT corporation "Land of Liberty Inc." which will soon be using the property) wanted to wait until a pending Federal action with regard to the property was settled. (Please see Exhibit C Federal action Javino vs. NYDEC & Town of Islip CV 07-0574 ) The matter regarded the two structures on the property building permits not being timely entertained by the Town of Islip in violation of various constitutional issues under 42 USC 1983 illegal warrant less searches etc. Honorable Kuntz Brooklyn Federal Court (case was transferred to Brooklyn by virtue of the Eastern District Central Islip and not myself) was to decide my summary judgment motion back from February 2012 on or about March 2012. The matter to date was not decided by Honorable Kuntz. If attorney for Miller second mortgage holder David Fallon Esq. would have been ethical and gave a 30 day notice to all of us regarding the forced foreclosure sale of October 29, 2012, (that

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he was fully aware of both attorney's, the title company, myself, American land etc he purposely did not notice anyone not even the current tenant to the sale of the property October 29, 2012 and David Fallon to this day claims that he didn't have to by order of the Court which I say is absolutely bogus unethical and wrong) Gene Smith (50% purchaser) would have paid him in full being he has the funds. I found out the night of October 23<sup>rd</sup> by virtue of Alex from Suffolk Realty of a sale date a few days away not enough time to obtain checks from the Gene Smith 1031 Exchange. Notwithstanding Fallon would not reply to any of my correspondences calls or faxes with one exception of the payoff amount and sale date which I received Thursday October 25<sup>th</sup> by virtue of a fax only which a sale date the following Monday October 29. I already filed an order to show cause in Supreme Court on October 25<sup>th</sup> pro se which was granted without a TRO (See Fallon failure to disclose to your honor fax exhibit as Debtor exhibit K). Fallon would not reply to any correspondences after I faxed him and mailed him the Order to Show cause. Though I am responsible for this entire night mare he is absolutely unethical committed numerous acts of improper service and caused me not only to file a mistaken bankruptcy with his intentional lack of communication but I drove out to Islip Town hall steps in a Hurricane, ("Sandy "October 29, 2012 100 year storm) called him numerous times with no reply not even to this day. Please note his notice of October 25<sup>th</sup> didn't tell me where the sale was going to take place, I threatened him that I would make a complaint to the grievance committee in lieu of his unethical conduct and today he is continuing to throw stumbling blocks and/or make up stories about my character which I will discuss and explain my opinion to you further on.

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7. So here we are in Chapter 7 bankruptcy proceedings. On October 26, 2012 Friday I filed a bankruptcy proceeding without speaking to any bankruptcy attorneys or anyone knowledgeable with such being I had little time to do so. I honestly know very little about bankruptcy. If at the worst case scenario a chapter 11 reorganization should have been filed not a 7 Liquidation (as per Attorney Phil Felice). On or about November 2012 I was present at the 341 meeting and observed Trustee Pergament from the front row. I am passionate about law and wanted to absorb as much about Bankruptcy as possible because I never filed any bankruptcy personally or corporately before and never intend to ever again. I wanted to learn about the laws, rules, procedures etc. and I have learned plenty to date.

8. Trustee Pergament told me he would not speak with me without an attorney so I met with an attorney Phil Felice esq. who postponed the December 3<sup>rd</sup> 2012 341 meeting in lieu of looking over the American land matter. Trustee Pergament consented to the postponement but now throws it up in my face that I did something wrong by not appearing December 3<sup>rd</sup>. On December 19, 2012 I appeared again but this time filed a motion to withdraw/dismiss the bankruptcy in lieu of my consultation with attorney Felice Esq. on numerous grounds. First I have a pending contract which is now being revised in lieu of the delay. Second is that the property is valued over one million dollars ( see exhibit D Appraisal) and a chapter 7 is absolutely not the proper filing. Third that I have retained Felice (see exhibit E) to reopen the default judgments with Gazza and Miller with regard to the Supreme Court default foreclosures on the grounds that money

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was paid and not credited to the account, unethical practices by not serving the defendants properly and usury. That I have a right to due process of law. And that my Bankruptcy petition is fatally defective and the chapter 7 must be dismissed as a matter of law. If Your Honor can somehow allow my attorneys to negotiate with the creditor I can get him paid and we all walk away winners. I am not sure of what tool your Honor can use but it will be in the best interest of justice to keep me responsible to the creditor and discontinue the bankruptcy and allow me to pay the creditor. I am at your disposal and welcome all or any suggestions. Please note: In Attorney David Fallon's correspondences he claims that if you dismiss this bankruptcy He will file a new foreclosure sale and I welcome the new date because now we are ready for him. He also mentioned that I would file another bankruptcy. What if I sign a stipulation that will not allow me or American Land to file a bankruptcy within one year of Feb 5<sup>th</sup> 2013 date. Here David Fallon can commence a new sale date without any irreparable harm to him or his client this will insure he will be paid off in full, however I need him to give me a payoff number for let's say the end of February 2013. If you read his exhibit C I offered him in good faith 5000 dollars, he obviously declined and another point I make of his not cooperating with my quest to pay off his client. He was absolutely knowledgeable to the deal with Smith (see exhibit F correspondence with Christian Kolleran Esq.)



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**REPLY TO TRUSTEE PERGAMENT'S OPPOSITION**

9. Trustee's opposition 1 through 11 is accurate but with regard to the real estate taxes arrears they are to be paid in full at the closing.

10. With regard to Pergament's number 12 I put Trustee Pergament on notice that I have moved the Court to withdraw and or dismiss the Chapter 7 Petition and in alternative liquidation is not intended and if anything I have the right to amend to reconsolidation an chapter 11. (see fax to Pergament as exhibit G) Now Pergament is playing dumb that he had taken it upon himself to generate legal fee's legal wrangling and had contacted the tenant who was about to sign a lease for 2500 dollar per month and now told me that the property is sold and I must move out and he has no intention in paying rent no less sign a lease. So quite frankly notwithstanding the mental anguish Trustee Pergament is causing me I now have material damages. Pergament also had people break into the property which I have on video camera writing down vin numbers and license plates when in fact he is aware that this petition is fatally defective no less a seventh (7) petition is not the intention of the best interest of the debtor corporation myself as creditor or in the interest of justice.

11. Pergament again plays dumb he had researched the entire property but misleads this Honorable Court by not informing them about a Federal action pending with regard to the structures and future development of the property. When in fact he is licensed through his law firm to practice law in the Federal Courts that it is my belief he was aware of the action, he knows almost everything else. See Javino vs. DEC CV 07 0574 and is the cause for delay of the closing.

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12. Pergament in disregard of my rights of enjoyment of the property claims that I am not cooperating with him. It is my position that I am not going to help him to violate my Civil Rights under 42 USC 1983 rights under constitutional rights, due process of law and in conspiracy under 18 USC 1961 to 1968 by virtue of selling my property off for the amount claimed owed by the creditor when in fact it is appraised for over one million dollars and the amount owed to the creditor is about 53,000 dollars.. Pergament had taken it up on himself to put the cart before the horse and generate legal fee's real estate fee's, fee's for who knows what all to sell off the property for peanuts to earn his commission by disregarding the fact that American Land Acquisition Corp was formed without any money or assets so it can gain creditability and the property in question was deeded to the Corporation by myself making myself the biggest creditor. Pergament jumped the gun and in my opinion must wait for this Honorable's decision on the issues at hand before he has the right to start generating income for himself and his law firm or any other entity that he is associated with and the fact I will move in alternative to turn the error of filing a Chapter Seven (7) to an eleven (11 ) which Pergament clearly is violating my rights of due process of law by not availing me the courtesy and right before attacking my equity in the land.

13. At Pergaments 13 I need to know where Trustee Pergament is demanding any rents in his papers or conversations with me. Pergament is absolutely committing perjury. Trustee never told me verbally or in writing about requesting rents. I only received three documents in the mail from Trustee Pergament and two of them to my personal residence,

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nothing mentioning rents, that he gained my personal information from my attorney in violation of attorney client privileges.( see attached retainer ). Felice is retained on the Gaza and Miller foreclosure matter, and was interviewed by myself about this bankruptcy matter but not retained in lieu of moving the court pro se to dismiss and withdraw the Chapter 7 Bankruptcy petition that there is a pending contract, the company is not to be closed down it only owes one creditor, it is doing business (see exhibit H Contract with Suffolk County) and myself has no intention in shutting down the company or selling the property other than that pending contract with a partner in a not for profit Corporation that was formed to assist returning veterans in housing and transitions back to society by utilizing the lands in question to operate the corporate head quarters (please review corporate info Land of Liberty Inc. as exhibit I).

13. At Pergament's 14 Trustee had taken it upon himself by virtue of his own research to information that he decided to use in the best interest of his quest to sell off the property without regard for the debtor's rights and the debtor's owner myself as the creditor to exparte move the court without my knowledge to hire a real estate broker incur fee's and quickly obtains an offer to purchase the property for I quote him " I have already received two (2) offers to purchase the property for an amount sufficient to fully satisfy the first and second mortgages and the unpaid real estate taxes." again Pergament fails to include myself as a creditor in lieu of the fact that information was not included in the defective petition which the Trustee is basing his inaccurate shot in the dark about the factual information with regard to the assets values and future of the company in question and takes it upon himself to go forward full force as if he was not noticed to my dismissal

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intentions. He is violating my rights as the number one creditor, I did not give the corporation the property for free being it had "no money" and owes me much more than the amount owed to the first or second mortgage holders. Pergament plays dumb and leaves me out his equation violating my rights under Constitutional Law .

14. At Pergament's 16 Trustee in agreement and in consent with Phil Felice esq. who was reviewing the materials to American Land to postpone the 341 meeting of December 3, 2012 now using it as a sword against me that I did something wrong by not showing up. Pergament is absolutely misleading the Court as to discredit myself that I am derelict in showing up at scheduled meetings when in fact he consented in lieu of Felice's request to do so.

15. At Pergament's 17 Bankruptcy attorney Felice clearly advised me that I don't need to file bankruptcy in lieu of a pending contract, and/or reorganization and the petition is fatally defective to withdraw and move the court to dismiss. That he will move the Suffolk Supreme Court to vacate and set aside both default foreclosure judgments ( see Felice retained exhibit E).

16. At Pergament's 18 Please be advised that Gazza and Fallon attended the 341 meeting and spoke to Trustee Pergament without my knowledge, and now Pergament comes forward with written communications from both parties. It is my belief that Pergament advised both attorneys to write him letters to discredit myself and in conspiracy to violate my rights to Irreparable harm in the loss of the equity in my property and in violation of 18 USC 1961 to 1968 loss to property and business under the color of Federal law. Why would Gazza and Fallon write correspondences to Pergament when in

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fact they met and talked to each other. I will explain my position of both parties co respondents and quite frankly Gazza is not mentioned in my petition so one would figure that Pergament reached out to the mortgage holders upon his own research and due diligence by jumping the gun without regard for this debtor and Dale Javino myself as creditor & my rights.

17. At Pergament's 19 & 20 I did receive his correspondence on or after the new year and quite frankly I already moved to withdraw and dismiss, that I had all that information at the first 341 meeting of November 27, 2012 informed Trustee Pergament to this and he basically told me "not to get comfortable that I won't speak to you that you have no attorney" I told him I have all the documents and papers he told me to consult an attorney and I did.

18. At Pergament's 21 I was not knowledgeable to his request for a court order because I only looked at the docket sheet on December 19 and knew of no request by Pergament to so move this Honorable Court for an order under Rule 2004 examination and or receive any order from this court. I was absolutely not properly served because no one had mailed personally handed me or served me with any court order. I obtained the information attached to Pergament's opposition papers which is not proper service. In essence I should be afforded upon my objection that I was not properly served the court order no less a chance to oppose the request and in alternative be given enough time to oppose Counsel's request for information and documents and or hand over that information by order of this court.

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19. In conclusion of Trustee Pergamant's opposition this Honorable Court should agree that the mortgage holders will not be harmed if the petition is dismissed or withdrawn they can simply file another foreclosure sale. On the other hand this Debtor and creditor myself will absolutely be irreparably harmed and lose not only future business, but in enormity about 800,000 dollars in equity. Please note when I contacted Trustee Pergamant last week and he did respectfully call me back twice he left a message when I could call him to discuss any issues and that he had an all cash offer of 600,000 dollars. With all due respect for this Honorable Court and trustee Pergamant I find it peculiar that when I interviewed an attorney named Michael whom knows trustee Pergamant and was the only attorney not afraid or hates trustee Pergamant we discussed the American Land matter. I had taken it upon myself to divulge my contingency plans of filing a Civil Rico Conspiracy action against Pergamant his law firm and the other participants. When in fact he told me that Pergamant has an EGO and that I should pay him off. I was sickened that this is what I have to do because I unknowingly stumbled into a major pitfall or even to the extent stepping on a land mine by filing a petition in the bankruptcy court. That I am being extorted and its all about commissions without any regard for me as a creditor or as a debtor. Then the amount of the sale price changes from merely paying off the creditors one whom is not even listed in the petition to now SIX HUNDRED THOUSAND (600,000) Dollars. And so on. The offered amount should simply show this Honorable Court that a chapter 7 is not an option and that Counsel Felice is correct that this petition must be dismissed as being filed by mistake.

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**REPLY TO WAYNE MILLER'S AFFIDAVIT IN OPPOSITION TO WITHDRAW**

20. I have no problem with Wayne Miller and have stated earlier am very sorry for involving him in this legal wrangling that I diligently prepared numerous times payoffs and paid more than one attorney to facilitate satisfaction and settlement of my indebtedness to him, however I have a "major problem" (emphasis added) with his attorney and I will express my opinion that Wayne Miller did not write this affidavit that David Fallon his attorney wrote it and Miller just signed it and I will explain as follows:

21. At Miller 3 he expresses that I lied to him consistently, please be advised that I never met Miller I don't even know his true address up until now. How does one lie to someone if we never met. I find that hard to digest. All of Miller's derogatory statements are a ploy by David Fallon to discredit myself to this Honorable Court as he had been consistently throwing stumbling blocks into the path of paying off his client and refusing to work with me. David Fallon is pissed at me not because I didn't pay his client rather I caught him cheating its is Fallon's ploy to get a default judgment and then if the defendant (myself) finds out (I will one day when the property is being sold) that a party must provide a two prong test to overturn a default judgment, 1). an excuse for default and 2). a meritorious defense, it's the backdoor way of obtaining a summary judgment motion. You see a righteous attorney will attack from the front serve the proper parties with the Summation and Complaint and be a gentlemen and let the case be decided on the merits. A "sewer service attorney" will do such as David Fallon had done and whom continues to do this to day. The man wishes I get run over by a truck and then the truck backs up twice....

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I did represent myself, perse and did prevail in winning an award of having the foreclosure matter dismissed against myself personally ( see Hon Denise Molia decision Exhibit J) and Fallon won on the fact the Corporation was not represented by counsel. Honorable Molia did mention even if represented by counsel the prior attorney for Miller did serve the NY department of state that American land was deemed a foreign corporation and serving the state of New York was proper service. My argument then and now is Fallon knows that the office of American Land is 1000 Tenth street and he has knowledge of my intervention and my home address but yet still feels that he doesn't have to serve me at those places personally, or by mail and/or American land because it was not represented by counsel and or at the least the tenants, Christian Kolleran esq. attorney representing American land in the sale, Paul Siepmann the attorney for the purchaser or anyone else not notifying them of the foreclosure sale date is proper and not unethical. I feel beyond any doubt he is practicing sewer service and dirty practices when infact he knew and knows today but yet did not serve me with anything. ANYTHING..(emphasis added) Absolutely unethical. So in essence I threatened him with a complaint to the grievance committee.

My now attorney Phil Felice spoke to David Fallon to get a payoff so I can resolve the matter once and for all. I over heard David Fallon tell Felice because Javino threatened with the Grievance committee tell him simply “ \*&^^&\$%\$%#^\$%&\*& “ (I rather not mention to your Honor) I fell out of my chair what kind of attorney uses this conduct. My position is if he did this to me he did this to others and I will report him to the proper authority but in the mean time I have to deal with him. Fallon also said because there is a



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bankruptcy all collection stops and that sounds correct. He also said he would rather get the money from the Trustee than me. So you know that Fallon is not going to help the situation rather be a problem and I hope the court sees through his deception. You see I was told about Trustee Pergamant that he is a tough cookie I was also told about Honorable Alan Trust that he is highly intelligent and very fair, so I will simply point out something that the honorable probably already seen in Counselor Fallon's papers. If you review Miller v Fallon opposition their exhibit B my fax of October 26, 2012, forget the language look at how many pages were sent to him... Fallon leaves out the other 9 pages of the fax and why??? If you would be so kind and turn to my (exhibit K fax to Fallon all ten pages) the order to show cause I filed the day before. Here the Honorable can get the gist of my fax communication that day of obtaining all 10 pages from my fax communication to David Fallon esq. attorney for Miller not just the cover..

22. You see I am not too happy with Counselor Fallon's conduct that I have dealt with many attorney's in my life and never crossed paths with such a unethical attorney who he states that his conduct is proper. Please review his correspondence to me as (exhibit M) that he doesn't have to notice anyone as per court order. I would love to see that court order.... Counselor Fallon also expresses in Wayne Miller's affidavit at 7 that I purposely using deception which is not true. In the original petition the address I had for Wayne Miller was his attorney so I mailed the attorney the bankruptcy information. After I met with counsel Felice I was told I don't have to notice the attorney that service to the attorney is improper rather the last know address of Wayne Miller being he is the creditor and the only address I have for Miller is the 700 Lakeland Avenue

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Bohemia which is Alex Curtis /Suffolk realty's address. Which is the address on the mortgage papers. Now counselor Fallon through Wayne Miller is trying another ploy to discredit myself by saying that I was trying to not properly serve his client..

23. At Miller & Counselor Fallon through Miller mentions the first mortgage holder and attaches the letter from the first mortgage holder Gazza. It is my opinion that the parties involved in this matter are purposely misleading the court in conspiracy under 18 USC 1961 through 1968 under color of Federal law to cause loss to property and business which holds treble damages if proven. If the property is forced sale of 600 thousand dollars and I am not allowed to my due process of law to contest the amount owed to the mortgage holders by virtue of the aforesaid mentioned my corporation and myself as a major creditor will be irreparably harmed in the amount of over 500,000 dollars.

24. In conclusion of Millers affidavit, it is a ploy by Counselor Fallon to discredit myself with absurd inaccuracies and the fact that I have every intention of paying Wayne Miller that the tactic by his attorney must be seen right through by this Honorable Court that I have never filed bankruptcy before corporately or personally and in lieu of the conduct here I will never again. That the honorable must dismiss the petition as a matter of law and let me continue my contract and settle the matter once and for all with the mortgage holders.

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**IN REPLY TO THE GAZZA LETTER**

25. I am absolutely appalled at the Gazza letter dated January 10, 2013. As I stated earlier what purpose does a letter of this nature serve and why was it written to Trustee Pergament the answer is only to discredit myself to this Honorable Court. Let's go over the letter. First I object to the letter being this party was not listed in the original filing as a creditor and should be stricken from the record. However I would like to have my opinion of the Gazza letter explained to this Honorable Court. Joseph Gazza passed away on February 28, 2011 and I am very sorry for the loss of Mr Gazza. Joe Gazza Jr had taken over the estate and he and his attorney is absolutely aware of the contract between myself American land and Eugene Smith ( as per exhibit B payoff's). I appreciate the Gazza family & Georgini law firm for extending me the opportunity to pay the Gazza estate back with a payoff of 150,000 dollars payable on or before August 31, 2012 without any more grueling litigation and even though I don't owe them 150,000 no less whatever outrageous number they are asking the court for now...(see (u) Pergament Exhibit "B" stipulation :Hon Costello" three years ago they were asking for 175,000 dollars something is wrong with their case).. Please note: I am the responsible party for the entire matter and was not the cause of the delay of the closing and paying off the mortgages rather the Federal action I commenced back in 2004 & 2007 against The New York Department of Environmental Conservation and the Town of Islip, sued under 42US § 1983 Javino vs. NYDEC etal. That the matter was moved to Brooklyn in front of

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Honorable Kuntz who ( and I am not complaining) have not made a ruling to this date. Another purchaser and partner Smith reluctantly wanted to wait until the federal court made a final ruling on summary judgment. The matter had to do with building permits with the structure that were built in lieu of the fact the town failed to reject or approval a permit in the proper time (over 2 and a half years) which was properly filed and not entertained though numerous attorney and petitioner letters and visits to the town Islip for permission. It has a major effect on the ownership of the lands and Smith wanted to wait. If Fallon would of properly noticed me or anyone else to an October 29, 2012 foreclosure sale date then Smith would have paid him within the rules of the 30 day notice. ( please review exhibit N) three contracts whereas Smith laid out the deposits in excess of 60,000 dollars for properties we are partnering from the Suffolk County sale of October 23<sup>rd</sup> 2012. Please note who's name is on the contracts. So in essence you know Smith would have paid Fallon... I found out from Alex Curtis who at the end of the auction October 23<sup>rd</sup> asked me if I was going to "my sale." I asked what sale, he said the sale of Ronkonkoma. I asked him what date... he said October 29th I asked him what year, he said in a few days. I don't have to tell you how I felt. I had a heart attack that I knew we didn't have enough time to close because Smith's funds are in a 1031 and it will take a minimum of three business days to obtain the checks from the bank beginning with the 24<sup>th</sup> notwithstanding placing high pressure on my partner Smith. I immediately called Fallon from the auction no answer or reply. I called him the next day no reply. I faxed him and he faxed me back a pay off yet he wouldn't talk to me on the phone or give me any other information. I commenced an order to show cause which is attached and mentioned

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previously. In my opinion Attorney Fallon played dirty and cause unwarranted problems and in my opinion notwithstanding that this entire matter is my responsibility cause me to file bankruptcy. He was suppose at the least give 30 day notice to the tenant at the property who is my best friend. Please note my best friend's company was taken over last month by my corporate neighbor who is now negotiating with the Trustee to purchase the property for half its value and refuses to sign a lease or pay any rent regardless of where the rents are to go. I have been damaged already by Pergament's over aggressive premature actions. notwithstanding writing for hours explaining myself to withdraw and dismiss a petition that was filed under duress and unfair circumstances.

26. Back to Gazza's letter,,, do you honestly believe first paragraph last sentence that a New York State licensed law firm was unable to get a foreclosure sale because of a non-attorney pro se litigant on his own???? In my opinion Georginni was unable to sell the property because I was cheated since 2005 and the foreclosure of 2007 was fatally defective that I was "not in default" thus they were unable to sell the property. The truth will come out now that I hired an attorney to investigate and reopen the matter.

27. Furthermore, again I am absolutely appalled to Gazza's statement that I said I am smarter than lawyers and judges, COME ON is he kidding. I would like to know when where and how I told Gazza that bizarre statement. That by itself should show this court that Gazza is going way over board with his ploy to discredit me. The bottom line I was ripped off not credited erroneously foreclosed upon and attacked by Gazza and his entire group of attorney's and they say a non attorney has prevented them to sell the property. Please note it is very difficult to obtain a mortgage when you are in foreclosure

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even if dismissed it is still on your record. I have damages in lieu of Gazza's frivolous foreclosure, maybe I am stupid for not hiring an attorney, its just that attorneys have cheated me so many times.....forced me to learn about law.

I hope this Honorable Court see's all the circumstances and grants my motion.

### **ARGUMENTS IN REPLY AFFIDAVIT**

#### **TRUSTEE LACKS PERTINENT INFORMATION**

18. I would first like to say at the very beginning that I mailed the trustee at his law office the Corporate resolution (corum of shareholders) to voluntarily file bankruptcy PRC SE in lieu of the pending sale by David Fallon second mortgage attorney. The document clearly says "temporary restraining order being stricken it was time to take evasive action and file a emergency stay with the honorable bankruptcy court under any chapter in the best interest of the corporation chapter 7 or 11 for reorganization or liquidation no time to hire bankruptcy counsel" (see exhibit "O" emergency Resolution of October 25, 2012) Trustee Pergament received this document on or about November 8<sup>th</sup> in essence Pergament was fully aware what the intentions of the corporation was to file under a chapter that was in the best interest of the corporation and notwithstanding the pending motion thus he continued to generate wasteful resources even after I had a long conversation with him on December 20, 2012 and sent him the motion to withdraw and dismiss and fax with the proofs (see exhibit G fax to Pergament ). Yet Pergament leaves

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this document out of his opposition and continues to this day to cause unwarranted damages such as the tenant now will not sign a lease and refuses to pay any rents. Notwithstanding having his people enter the lands without my authorization or permission violating my right to enjoy the property under the U.S Constitution 4<sup>th</sup>, 5<sup>th</sup> and 14<sup>th</sup> amendments. It is apparent Trustee is commission motivated. So from the very beginning Pergament was fully aware of the corporate and my intention of the direction of this Corporations future. Dismissal will not negatively effect anyone, continue the bankruptcy and I will absolutely be unfairly damaged and my rights and the rights of my corporation under various federal law.

### **PENDING CONTRACT**

29. There is a pending contract to sell half of property dated August 10, 2012 and all parties were aware of this contract. All the variables of the deal were set in motion long before the October 26, 2012 filing of the Chapter 7 bankruptcy. The title report was ordered back in April 2012 and the attorneys were hired and started to reach out to the mortgage holders. Approximate dates were set for closing on or before August 31, 2012. The purchase is going forward and so are everyone else. If an Eleven was filed would this Court allow dismissal in lieu of the pending contract. It is my belief that I could request that the bankruptcy be dismissed in lieu of the sale because I assume you can't sell anything while in bankruptcy even a percentage of something. The bankruptcy would hamper any positive outcomes. Yet I am being hammered to the wall by Trustee Pergament who is forcing the sale of the property when he knows a Chapter 7 was not the

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proper filing chapter and he still doesn't have all the pertinent information, notwithstanding leaving me out as a major creditor. The petition is fatally defective, the creditor attorney has violated disciplinary rules with his purposely failing to notice any of the parties committing attorney misconduct. The closing was legitimately delayed in lieu of a pending federal action commenced by myself in 2004 which was withdrawn and reinstated in 2007 which the summary judgment motion was promised to be decided back in March 2012 and to date has not. The purchaser is willing to pay off the second mortgage holder while we wait for the decision to be rendered in the Brooklyn Federal Court and attorney Fallon will not prepare a payoff as long as we are in bankruptcy yet he opposes dismissal of it. I hired an attorney to work with the Gazza family and their attorneys to work out a settlement and if no settlement can be reached I have a right to reopen the default foreclosure judgment. So in essence a sale of the property by virtue of bankruptcy the corporate and personal rights of myself will be breached and irreparable harm will absolutely result in an excess loss of over 500,000 dollars. Dismissal will not harm the creditor Miller or Gazza.

#### ATTORNEY MISCONDUCT

30. Again I am the party solely responsible for this whole matter, however there are other elements and parties who made matters worse causing a domino's of walls and stumbling blocks making the issues at hand to resolve much more difficult. Here is my opinion and belief of each Attorney involved in this matter.



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1). David Fallon esq. attny for second mortgage holder he had taken over the foreclosure case from the second mortgage holder original attorney. He doesn't notice anyone to anything and feels his conduct is proper. I am very easy to find and get my mail at my home which is listed in the white pages, Fallon also has my business address which is the same address as the property in question. Yet he wants to claim to hold the letter of the law when in fact he is breaking it and say a). I never sent a change of address to the court. I never was served or even knew of a second mortgage foreclosure until the unified court system informed me a year later b). I obtained by virtue of a court order removing me from the second foreclosure action personally, yet Fallon knows I represented myself and caught him doing sewer service, c). fails to notice me on every issue in the action and claims because American Land wasn't represented by counsel. He feels ALAC is not represented so he doesn't have to serve it at the corporate address or anywhere else, but what about myself before the court made its decision to drop me from the action or the tenants. He said in his papers that I am collecting rents, he knows about a tenant. I will let your honor make that decision. See his conduct forced me to file bankruptcy prematurely under dire circumstances notwithstanding taking me away from my home and family in Center Moriches during a major crisis by driving to Islip Town hall in a full blown hurricane about 25 miles away or more. Forget law how about human decency he should be disbarred, guys like him shouldn't be practicing law or deciding people's fate with that conduct I'm sorry.....

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- 2). Joseph Gazza Jr. Esq. taken over his dad's estate I guess his letter speaks for himself. Gazza will not entertain a payoff, which is an absolute right under New York law that upon my research and belief a mortgagee must give a payoff within 30 days of a mortgagor's requesting one. Your Honor can use his own desecration.
- 3). Marc Pergamant Trustee highly intelligent but plays dumb to the true facts of the case and is commission driven. He does not have all the pertinent information yet he is going forward anyway without it violating the rights of the corporation and myself by prenatually going forward acting like an uncontrollable loose cannon.

**WHEREFORE**, I pray that this Honorable Court accept my papers, dismisses the Bankruptcy in lieu of that there is a pending contract from August 2012, that the attorney for the second mortgage holder failed to notice the parties to the foreclosure sale of October 29, 2012, when in fact he had absolute knowledge and communicated with the attorney's in the contract weeks earlier and that the bankruptcy will damage the debtor corporation and irreparably harm the creditor Dale Javino. Notwithstanding the petition is defective on numerous grounds and in alternative give me the time staying these proceedings to amend to a chapter 11 to reorganize because the worst case scenario is reorganization and not a Chapter 7. Dismissal is proper Court may use its discretionary powers in the interest of justice any other further relief this Court deems just and proper.

Date: January 24<sup>th</sup> 2013

Center Moriches, New York

**DALE R. JAVINO** pres

**SWORN TO BEFORE ME THIS 24<sup>TH</sup> DAY OF JANUARY 2013**

**(NOTARY)**

**NOTARY PUBLIC**

**SUFF NY 01/24/2014**

**REG# 01CE4833435**

**JOHN P CERAMELLO**

*John P Ceramello*

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X Case No 8-12-76440ast  
In Re Judge Alan S Trust

American Land Acquisition Corporation

## Debtor

\_\_\_\_\_X

## AFFIDAVIT OF SERVICE

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF SUFFOLK)

**JAMES FAVINO BEING DULY SWORN DEPOSE AND STATE THAT I AM EIGHTEEN YEARS OF AGE AND NOT A PARTY TO THIS ACTION:**

ON TUESDAY FEBRUARY 7, 2013 I MAILED A TRUE COPY OF THE REPLY AFFIDAVIT ON THE UNITED STATES TRUSTEE, LOCATED AT THE UNITED STATES COURTHOUSE CENTRAL ISLIP NEW YORK 11722 , ON THE TRUSTEE MARC PERGAMENT LOCATED AT HIS LAW OFFICE WEINBERG GROSS & PERGAMENT 400 GARDEN CITY PLAZA SUITE 403 GARDEN CITY, NEW YORK 11530 AND WAYNE MILLER CREDITOR LOCATED AT 263 RIVER AVENUE, PATCHOGUE, NEW YORK 11772 BY DEPOSITING INTO A UNITED STATES POSTAL RECEPTACLE FIRST CLASS PREPAID MAIL.

DATED; FEBRUARY 7, 2013  
CENTER MORICHES, NEW YORK

~~JAMES JAVINO~~

S'WORN TO BEFORE ME THIS 7<sup>TH</sup> DAY OF FEBRUARY 2013

(NOTARY)

JOANNE HELMS  
Notary Public, State of New York:  
No. 01HE5058740  
Qualified in Suffolk County  
Commission Expires 12/26/13